

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.8043 OF 1997

For Approval & Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?

PANKAJKUMAR DANABHAI MAKWANA
VERSUS
THE STATE OF GUJARAT & ANR.

Appearance:

MR DK MEHTA for Petitioner
MS KN VALIKARIMWALA for Respondents

Coram: MR.JUSTICE S.K. Keshote,J
Date of decision:15/08/1999

C.A.V. JUDGMENT

#. Heard the learned counsel for the petitioner.

#. Even on the material and important facts, it is really shocking that the learned counsel for the petitioner has not given reply. However, the learned

counsel for the petitioner admits that on 11.3.99, when the petitioner's father expired, the petitioner's elder brother, aged: 23 years, and two elder sisters, aged: 21 and 18 years respectively, were there. In case, it would have been really a case of financial hardship to the family because of sudden demise of the bread earner, the elder son, who was major or two elder daughters who were also major, could have applied for giving appointment.

#. The learned counsel for the petitioner submits that the elder brother was residing separately. However, on being asked by the Court, the learned counsel for the petitioner does not dispute that the elder brother was in gainful employment. However, he has not disclosed where he was gainfully employed and what were his qualifications. These are material facts which have strong relevance to the point in issue and the same have not been disclosed. It is very convenient to say that the elder brother was living separately, but this Court cannot be ignorant of the fact that the on the date of death of the father of petitioner, the elder son was in gainful employment and as such, it cannot be said that the family was put to such financial crises where to overcome the same, compassionate appointment has to be given. The very fact that the petitioner applied for compassionate appointment on attaining majority goes to show that he is now seeking appointment as of right. Compassionate appointment does not mean for giving appointments to the dependents of the deceased employees as a matter of rule or right. It cannot be taken to be a bearer cheque which can be encashed at any time. The question of giving appointment on compassionate ground has to be considered on the day on which the employee has expired. That is crucial day on which the financial condition of the family has to be gone into. In this case, in the presence of the admitted facts, it is clear that the family has not faced any financial crises, otherwise, the elder brother would have prayed for giving him employment where he would not have been employed elsewhere. The very fact that the elder brother was in employment goes to show that it is not the case where the petitioner can claim appointment on compassionate ground as a matter of rule or right. This application filed by him after more than two years and eight months from the date of death of the father could not have been allowed and rightly it has not been allowed. The learned counsel for the petitioner had laid much stress on the fact that the application is rejected on erroneous ground and the ground of rejection of application by respondents is not maintainable. Substance of the case has to be considered

and only when the petitioner's case falls within four corners as laid down by the Hon'ble Supreme Court in catena of decisions for giving compassionate appointments he can claim appointment and not otherwise. This is a case which clearly does not fall under any of the four corners in which compassionate appointments are permissible to the dependents of the deceased employee as laid down by the Hon'ble Supreme Court.

#. This Special Civil Application is wholly misconceived and the same is dismissed. Rule discharged. No order as to costs.

(S.K.Keshote, J.)

[sunil]